

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

September 22, 2004

Dear Xxxxx:

This letter is in response to your letter received in this office on March 2, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is registered for Sales and Use tax in the State of Illinois.

We are seeking a **written** determination or letter of information regarding whether or not sales tax laws in your state apply to our two Internet products described below. We are not seeking a formal tax ruling.

Company Background

ABC is a management training and consulting company. We provide management training, consulting, coaching services and sales of management related products such as books, videos, posters and other printed material. We are a STATE, Subchapter S corporation. Both our administrative and production and warehouse facilities are located in STATE. Our sales force all work from their homes. We sell our products and services through our sales force and we also sell selected products via the Internet. Our delivery of service can be either in person or via the Internet. Our delivery of product is by common carrier.

## Product Description

PRODUCT1 is an assessment tool for determination of an individual's behavior profile. After answering a series of questions, an individual will receive a report containing their behavior profile. An individual can elect to have others answer the PRODUCT1 as an 'observer' and the results are added to the primary individuals behavior profile. The questionnaire is answered on-line, the behavior profile report is also delivered on-line. The individual will receive an email notice containing the web address that contains their 27 page behavior profile report as a PDF document which they can choose to print or save to their local computer. The behavior profile report can be accessed for up to 60 days. An extension of time can be purchased. The introductory price is \$19.95 with the expectation that the price will increase to \$30.00. The web site is hosted on a server that is located in CITY/STATE. ABC offers this product only on-line, we do not sell this version as a paper product.

The following is from our marketing material:

'These in-depth individualized feedback reports go beyond mere descriptors by providing prescriptive growth plans to improve effectiveness in work relationships both in one-to-one and team settings. These rich reports provide valuable insights for each employee's preferences in the areas of learning style, decision making and praise. Employees will also learn how they handle change, conflict, and communication. The PRODUCT1 allows employees to find out if they see themselves as others see them by including an unlimited number of observer assessments for each person. Using online delivery your organization will be able to deliver learning throughout the organization in less time for greater impact, maximize training time by having employees complete their assessments prior to training sessions, save time for your employees by removing the burden of scoring with the added benefit of more accurate results, and an in-depth individualized report, and unlimited observer feedback are all included.'

## **PRODUCT2**

Paper Version - It is a printed 19 page pamphlet that contains 24 questions as well as the instructions on how to interpret your answers to these questions to complete various graphs to gain insight in to your Personal Profile. The report provided is 14 pages.

Web Version - The Internet version uses the same questions as the Paper version. The report is the same and can be printed by the individual or saved to their local computer. The web site is hosted on a server that is located in CITY/STATE.

PRODUCT2 does not allow for the input of others as observers and the compilation of a report that discusses the combined results of the individual and the observer. The questions used in the PRODUCT2 are different then the ones in the PRODUCT2. The PRODUCT1 was created and is owned by a different author group and company then the PRODUCT2.

Please reply in writing to Sales Tax Accountant. Thank you in advance for your help in this matter.

## **DEPARTMENT'S RESPONSE:**

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to the customers, then no Illinois Retailers' Occupation Tax nor Use Tax would apply. Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to the customers incident to the services provided, then no Illinois Service Occupation Tax nor Service Use Tax would apply.

Canned computer software is considered tangible personal property no matter in what form it is transferred (including electronic delivery). See Ill. Adm. Code 130.1935. Except for canned computer software, information or documents that are electronically delivered do not generally constitute the transfer of tangible personal property in this State.

If tangible personal property is transferred incident to the providing of a service, such as the transfer of written reports, that transfer may result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his activities. The serviceman's liability may be calculated in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the serviceman's entire bill; (3) Service Occupation Tax on the serviceman's cost price if the serviceman is a registered de minimis serviceman; or (4) Use Tax on the serviceman's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale price of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106. These methods result in the customer incurring a Service Use Tax liability. See 86 Ill. Adm. Code 160.101.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the Service Occupation Tax rates for their locations. This method also results in the customer incurring a Service Use Tax liability.

De minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act may use the final method of determining tax liability. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal

property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108. Under this method the customer incurs no Service Tax liability.

Since you have stated that your company is registered with the Department, it cannot use method number four described above. You may wish to review the Department's letter rulings regarding the provision of documents in service transactions, such as ST 00-0216-GIL, ST 00-0090-GIL, and ST 94-0397-GIL. These letters may be found among the Department's Sales Tax "Sunshine Letter" rulings listed on the Department's internet website under the heading of Legal Research.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel

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